PERS 77-1545

12 May 1977

MEMORANDUM FOR: Executive Assistant, Office of Personnel

STATINTL FROM : [redacted]
Chief, Review Staff, OP

SUBJECT : S-1446, Financial Disclosure/Ethics, et al

REFERENCE : OLC memo (OLC 77-1827) dtd 9 May 77

Bob:

This is the same Bill that [redacted] (OLC) sent out last week for comments. His version was the White House release and this one is apparently the same material with a Senate number attached to it. STATINTL

As noted in the informal notes on the [redacted] request, apart from my aversion to the invasion of privacy at such a low level of financial interest (which is probably moot at this point as [redacted] notes there is no chance of change). I believe the Agency must be concerned with the authority of the Director of Ethics to monitor reports of Agency personnel, i.e., those employees under cover. Who sets the five per centum random sampling to be checked . . . how far can an investigation of an individual go in terms of publicity . . . would we have to clear . . . and swear to secrecy . . . the inspectors from the Director of Ethics? There are all sorts of ramifications of an apparently simple approach stated in the Bill. STATINTL STATINTL

I read the questions posed by [redacted] as having to be answered by OLC itself or OGC. We can only have opinions. But for what they are worth, I don't think the Bill as written gives any latitude to the Director to set his own rules unless the "prohibited by law" caveat applies. The Director's authority to protect sources and methods, et al, might provide this protection. STATINTL

I see two aspects to the prohibitions in Title II on post government employment. The individual whose government

[redacted] STAT

It is questionable if these rules would apply to individuals who use their own established employment as cover to do periodic pieces of work for us, and are not employees in the normal sense of the word. On the other hand, given the atmosphere evidenced by the Dellums Bill, there may be those who would regard such activities as coming under Title III, but exclusion from this Bill wouldn't solve that particular problem.

I doubt DDA can take a different position unless something is known there that we don't have. I would recommend responding to OLC that we agree the Bill poses problems, particularly in the area of protection of cover of certain employees (those with cover and those who may have cover at a future time) and that unless the CIA law protects us in this area, further exceptions should be built into the Bill. I don't believe we can reply on the good will of a Director of Ethics to allow for this factor in our personnel system. The Title III restrictions are such that I doubt CIA can be granted any exemption in the Bill. In this area, the good will of a Director of Ethics might come in handy on a case by case basis.

[redacted] STATINTL

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The Director of Central Intelligence
Washington, D.C. 20505

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MAY 1977

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Honorable Melvin Price, Chairman
Committee on Armed Services
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in response to your request for the views and recommendations of the Central Intelligence Agency on H.R. 3829, "The Federal Ethics and Financial Disclosure Act of 1977."

Section 205 of the bill contains a provision requiring Federal employees who are compensated at or over the grade of GS-16 salary level to file financial statements with the proposed Commission on Ethics and Financial Disclosure. Section 205(a)(4), however, gives the President authority to exempt individuals in intelligence agencies, including the CIA, from the requirement of filing reports with the proposed Commission on Ethics and Financial Disclosure if the President finds that public disclosure "...would reveal the identity of an undercover agent of the Federal Government." In those cases, the exempted employees are to file the financial statements with the head of the agency involved.

I feel that this may be too narrow an exemption and may expose top officers of the intelligence agencies to detrimental outside pressures or scrutiny.

I prefer the wording in S. 1446, the financial disclosure bill submitted by the President on 3 May 1977. This bill provides for the filing of financial disclosure statements by top officials of the CIA and other intelligence agencies with the head of the agency or department involved, rather than with the proposed Office on Government Ethics. S. 1446--properly in my view--does not distinguish between employees in these agencies who are under cover and those who are not.

A second area of concern is title I of the bill, which is written very broadly and prohibits "any conduct" that would "present to the public an appearance of impropriety." The broad provisions of title I, coupled with the investigative, hearing and reporting requirements of section 303, may present particular problems for this Agency as they

might be construed to conflict with existing law. In the course of any legitimate Government activity, including that of the CIA, the "appearance of impropriety" may result. An employee of this Agency whose activities did create an appearance of impropriety to anyone in the world then could be subjected to the procedures in section 303. The National Security Act of 1947 requires the Director of Central Intelligence to protect intelligence sources and methods, and the CIA Act of 1949 exempts the Agency from disclosing the names, titles, salaries and other information on Agency employees. Furthermore, there exists a specific mechanism for congressional oversight of the Agency's activities. We welcome the opportunity to work with appropriate staff members concerning these problems.

The Office of Management and Budget has advised there is no objection to the submission of this report from the standpoint of the Administration's program.

Yours sincerely,

STANSFIELD TURNER